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August 16, 2001

NOTICE OF WRITTEN EX PARTE PRESENTATION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: CC Docket No. 96-98 (UNE Remand Proceeding)

Dear Ms. Salas:

Enclosed is a copy of an ex parte that was sent today to Jeff Carlisle concerning the above-referenced proceeding to be filed with the Commission and placed in the record of the proceeding.

If you need any further information or have any questions, please do not hesitate to call me.

Sincerely,

Jacob S. Farber /GK

Jacob S. Farber

Enclosure

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August 16, 2001

Mr. Jeff Carlisle
Senior Deputy Bureau Chief, Common Carrier Bureau
Room 5-C356
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: CC Docket No. 96-98 (UNE Remand Proceeding)

Dear Mr. Carlisle:

You requested a summary of the record to date regarding CLEC's impairment with respect to unbundled switching below the DS-1 level and the justification for an increase of the line cap. Enclosed is a response to your request reflecting materials submitted by Birch Telecom, Inc. and Promoting Active Competition Everywhere ("PACE").

If you need any further information or have any questions, please do not hesitate to call me.

Sincerely,

Jacob S. Farber / GK.

Jacob S. Farber

Enclosure
cc: Jonathan Reel (FCC, Room 5-C261)

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BIRCH TELECOM, INC.
SWITCHING IMPAIRMENT

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TAB

There is Impairment with Respect to Unbundled Switching Below the DS-1 Level.

I. Even where a CLEC already has a switch in place, it is not economically viable to use that switch to serve customers with individual analog voice loops. Birch Petition at 4-6 (Tab 1); Birch Reply at 3-7 and at 7 n. 4 (Tab 2); Birch January 8, 2001 Ex Parte at 10 (Tab 4).

A. The major barrier to using individual loops to serve a customer is the non-recurring provisioning costs, including both the nonrecurring charges (NRCs) charged by the ILEC and the CLEC's own provisioning costs that are incurred on a per-loop basis.

1. ILEC NRCs for the migration of the loop are the chief component of the costs of provisioning individual loops. The Commission has cited those costs as ranging from $59.91 to $218 *per loop*. Birch Petition at 6 (Tab 1) (quoting *UNE Remand Order*, ¶ 266).

2. In addition to the ILEC's NRCs, the CLEC's incur their own costs for provisioning the loop, including primarily labor and collocation costs. Birch Reply at 7 n.4 (Tab 4).

a. Labor costs include, but are not limited to, establishing a new customer account information in the CLEC's systems, entering the conversion order into the ILEC's OSS, coordinating the actual physical conversion with the ILEC, and working with the ILEC to resolve any cut-over problems. Birch January 17, 2001 Letter at 9 (Tab 3). The significant costs of manual loop-to-port migration can be reduced by well over 90% by switching to electronic migration. *See* PACE July 11, 2000 Letter at 3-5 (Tab 6).

b. The Commission has found that CLEC collocation costs range from $15,000 to $508,000 per central office and that those costs can be prohibitive. Birch Petition at 5 (citing *UNE Remand Order*, ¶ 263). Birch's experience confirms the Commission's findings. Birch has received quotes for collocation in excess of $150,000 for a single central office. *Id.*

B. Birch has estimated that its actual non-recurring provisioning costs are $144 per loop. *Id.*

1. Amortized over a year, those costs represent $12 per month. Given that Birch's average revenue per line per month is roughly $50, this represents nearly 25% of Birch's revenue from the line over the first year. Even if the costs are amortized over two years, they still represent 12% of Birch's revenue.

2. The provisioning costs increase at the margin as additional customers are added. Because these costs apply on a per-loop basis, the costs are

just as severe a barrier at the 10th, 20th or 30th loop. Birch Petition at 5-6 (Tab 1).

3. It is much more difficult for a CLEC to serve high volumes of residential and small business customers than for those carriers who serve only larger business customers. Because a CLEC incurs provisioning costs on a customer-to-customer basis, it is far more costly and administratively difficult to manage the conversion of 25 four-line customers than to manage the conversion of 10 ten-line customers. Birch January 17, 2001 Letter at 9 (Tab 3).

C. In addition to the prohibitive costs of provisioning individual analog loops, there are significant costs for delays and difficulties inherent in serving a customer through self-provisioned switching and unbundled loops. Birch Petition at 4-6 (Tab 1); Birch Reply at 3-7, 7 n. 4 (Tab 2); Birch January 8, 2001 Ex Parte at 10 (Tab 4).

1. The coordinated cut-over (or "hot cut") process consists of multiple, labor intensive steps. This manual process is inefficient and plagued with difficulty and delays. PACE July 19, 2000 Letter at 4-6 (Tab 5); PACE July 19, 2000 Letter at 3-5 (Tab 6).

a. As an example of the inefficiency resulting in difficulty and delays, SBC's coordinated hot cut process requires each of the following steps to be manual: 1) CLEC confirms with SBC's LOC the scheduled time and date as provided in the FOC, and 2) SBC's LOC confirms with frame technician who begins laying cross-connects on the MDF, and 3) SBC remotely tests the customer's circuit facility assignment, confirms dial tone and that CFA shows matching customer to CLEC order, and 4) CLEC technician within 30 minuets of the scheduled time to authorize cut, and 5) SBC technician effects loop cutover, and 6) CLEC ports number by sending activate message to NPAC. PACE July 19, 2000 Letter at 5 (Tab 5).

b. The complex nature of the process subjects customers to disruptions that can be minimized only through additional complexity and manual interference. *See* PACE July 19, 2000 Letter at 4-6 (Tab 5).

c. This inefficient process cut has routinely affected the quality and reliability of CLEC services. PACE July 19, 2000 Letter at 4 (Tab 4).

2. Provisioning delays and coordination failures associated with the cutover process significantly exacerbate the costs. Birch January 17, 2001 Letter at 6 (Tab 3).

3. Birch's own experience confirms that impairment exists for customers that cannot be served through a DS-1 or larger facility. Birch initially attempted to use its three switches to serve customers below the DS-1 level. It became apparent, however, that doing so was not economically viable. Today, while Birch's three switches are all operational, Birch uses those switches only to serve customers who are large enough to be served over a DS-1 or larger facility. Birch Jan. 17, 2001 Letter at 3, 7 (Tab 3).

D. The above analysis assumes the CLEC already has a switch in place. It does not take into account the threshold impairment of the prohibitive cost of switching and the inability to obtain funding for circuit-switch based CLEC business models.

1. Circuit switches are many times more costly than next generation "soft switches."

2. Even if it were once possible to self-provision unbundled switching to serve the market segment in question, it no longer is. Currently, it is virtually impossible to fashion a business plan around circuit switches because lenders will no longer fund circuit switch deployment. Birch January 17, 2001 Letter at 12 n. 17 (Tab 3).

3. The next generation of packet switches is not yet commercially viable to serve mass market customers. *Id.*

E. The few CLEC's who oppose an increase in the line cap do not diminish the showing of impairment made by the rest of the CLECs advocating an increase in the line cap. The opposing CLECs are serving very different markets and have very different business plans.

1. Given the opposing CLECs large average line size, it is likely that a large portion of their customers are served by DS-1 or other high capacity digital facilities. Their average line size is a low of 10, to a high of 48. Birch's average customer has 3.6 lines. Birch January 17, 2001 Letter at 9-11 (Tab 3); Birch January 8, 2001 Ex Parte at 10 (Tab 4).

2. To the extent the opposing CLECs serve certain customers through individual analog voice loops, they enjoy higher revenues per customer and lower costs per line because of their much larger average customer size. Birch January 17, 2001 Letter at 9-11 (Tab 3); Birch January 8, 2001 Ex Parte at 10 (Tab 4).

3. In addition, these CLECs may be serving customers below the DS-1 level unprofitably and subsidizing them with revenue from larger customers. Birch January 17, 2001 Letter at 9-11 (Tab 3); Birch January 8, 2001 Ex Parte at 10 (Tab 4).

II. The Cut-off Should be Set at the DS-1 level or at a Minimum of 16-20 Lines

A. The DS-1 level is the logical cut-off point under the Commission's impairment analysis. By aggregating multiple loops into a single high capacity line, a CLEC both gains cost efficiencies and is able to avoid the difficulties inherent in the coordinated cutover process. Birch Reply at 7 (Tab 2), Birch January 17, 2001 Letter at 7 (Tab 3).

B. The best indicator of when a customer is large enough for a DS-1 facility is when the customer has already migrated to such a facility. Birch Reply at 8 (Tab 2); Birch January 17, 2001 Letter at 7(Tab 3).

C. In the alternative, Birch has calculated that the economic cross over point is between 17 and 20 lines per location. Birch Reply at 8-11 (Tab 2); Birch January 17, 2001 Letter at 7 (Tab 3).

D. Once next-generation packet-switching technology becomes commercially viable Birch's preliminary cost estimates suggest the cross-over point could be as low as 8-10 lines. Birch January 17, 2001 Letter at 8 n.11 (Tab 3).

1. If the Commission does decide to base the cross-over point on next generation technology, Birch believes that a 10-12 line cap would provide flexibility in the event that those projections are overly optimistic. *See* Birch January 17, 2001 Letter at 8 n.11 (Tab 3).

E. Cbeyond, an opposing CLEC, has stated that given the limitations of currently available circuit switching, it is not possible to economically provide service to customers with less than 15 lines through self provisioned switching. Birch January 17, 2001 Letter at 8 (Tab 3).